

# Court of Appeals, State of Michigan

## ORDER

Charles Pitts v Susan Beam

Docket No. 260426

LC No. 02-243658-DP

Stephen L. Borrello  
Presiding Judge

Richard Allen Griffin

Donald S. Owens  
Judges

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In lieu of granting the application, the Court orders pursuant to MCR 7.205(D)(2) and MCR 7.216(A)(7) that the order denying the motion to set aside the order of filiation is VACATED and the case is remanded for entry of an order granting the motion and requested relief. Plaintiff did not have standing under either the Child Custody Act, MCL 722.21 *et seq.*, or the Paternity Act, MCL 722.711 *et seq.*, to seek a declaration of paternity with regard to a child whose mother was married to another man at the time of the child's conception and birth. MCL 722.26c; MCL 722.711(a); *Kaiser v Schreiber*, 469 Mich 944; 670 NW2d 671 (2003); *Girard v Wagenmaker*, 437 Mich 231; 470 NW2d 372 (1991); *Aichele v Hodge*, 259 Mich App 146, 162; 674 NW2d 452 (2003) ("when a child is born during a marriage, a putative father can never successfully institute legal proceedings to be declared a parent").

This matter is REMANDED for entry of an appropriate order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 25 2005  
Date

*Sandra Schultz Mengel*  
Chief Clerk